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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,705	12/22/2000	Timothy Ray Martin	KCC-15,365.1	4547

7590 06/03/2002

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EXAMINER

JACKSON, ANDRE L

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 06/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/748,705

Applicant(s)

MARTIN ET AL.

Examiner

Andre' L. Jackson

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 and 22 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

DETAILED ACTION

Election/Restrictions

Applicant's arguments filed in the Amendment of April 22, 2002, traversing the Examiner's restriction requirement has been considered and agreed upon by the Examiner. Applicant's submission of drawings 8-13 supporting the embodiments recited in claims 8-13, 21-26 and 37-42 is approved by the Examiner and the restriction made that species I-VI are patentably distinct from one another is respectfully withdrawn. Applicant's claims 1-42 are prosecuted in this Action.

Claim Rejections - 35 USC § 112

Claims 6, 19 and 32-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "about" in claims 6, 19 and 32-35 is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore, the phrase "about 180 degrees" in claims 6, 19 and 32, the phrase "about 1 degree to about 45 degrees" in claim 33, the phrase "about 1 degree to about 30 degrees" in claim 34 and the phrase "about 1 degree to about 20 degrees" in claim 35 are indefinite. Appropriate explanation and correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 14-18 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,136,759 to Armour. Armour (Figs. 4 and 5a) discloses a fastening system (60) comprising a hook component (62) including a hook backing and a plurality of hooks protruding from it, with the hook backing forming a cavity as seen in Fig. 5a. A loop component (61) including a loop backing and a plurality of loops protruding from it, wherein a portion of the loop component fits into the cavity of the hook component.

Referring to claims 15-17, Armour discloses that the hook backing comprises first and second pieces (65, 66) folded over one another and sewn together enclosing an eyelet or ring (64) at a distal end and forming a cavity or opening at a proximal end.

Referring to claim 18, the loop component is shown having a portion folded over another portion enclosing a ring or eyelet (63) similar to the hook component.

Regarding claims 1-5 and 27-31, Armour discloses the hook and loop fastener material could be interchangeable or reversed such that the loop component forms a cavity with first and second backing portions and a portion of the hook component fits into the cavity of the loop component. See column 5, lines 48-52.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 19 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armour. Armour discloses a process in which the hook component (62) connects with the loop component (61) in column 6, lines 36-40. However, Armour fails to disclose a process to separate one component from the other. As seen in Fig. 5a, the hook component's first and second backing portions are spaced from another defining a cavity at an angle in which the loop component is inserted. It would be obvious to one having ordinary skill in the art that upon mating the first and second backing portions juxtaposed with the loop component, an angle of about 1 degree can be achieved. In order to obtain the various degrees (20, 30, 45, 180) between the portions, one or both of the backings is manipulated or folded back to release the loop component defining various angles between the backing portions.

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Claims 7-11, 13, 20-24, 26, 36-40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armour in view of USPN 6,287,287 to Elsberg. Armour discloses a multi-purpose fastening device for securing items or bundling the items. Armour fails to disclose that his fastening device could be used to secure or bundle an article worn by a user. Elsberg teaches a multi-functional fastener device for disposable absorbent articles. Elsberg (Fig. 4) teaches a fastening device (60) comprising hook and loop type fasteners (62, 64) releasably connected with panels (66) of hook and loop material to maintain a diaper (20) on a wearer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the multi-purpose fastening device of Armour into the disposable absorbent article as taught by Elsberg to provide a reusable fastener having the ability to vary the size of the waist opening in very small increments over a wide range to fit the waist of the wearer. See column 4, lines 42-50.

Claims 12, 25 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armour in view of USPN 5,775,967 to Lacoursiere et al. Armour discloses a multi-purpose fastening device for securing items or bundling the items. Armour fails to disclose that his fastening device is used in a swimwear garment. Lacoursiere et al teaches a diaper swim vest-floating device. The vest comprising left and right suspender panels (16, 17) integrally formed with a front panel (15) that wraps around the lower part of a baby's body forming a pant which holds the baby in place and a support panel (11) that supports a baby's head. Adjustable hook and loop fastener tabs are disposed at ends of the suspender and pant panels to secure the baby in various comfort positions which can be lengthened to accommodate a growing baby when engaging in water activities.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the fastening device of Armour to be included in the diaper swim suit as taught by Lacoursiere et al to provide an adjustable swim suit to secure a baby in various comfort positions which can be lengthened to accommodate a growing baby when engaging in water activities.

Conclusion

Additional references are cited on the PTO 892 form but were not used to determine patentability of this application instead the references gave background information on various hook and loop fastener devices.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276. The examiner can normally be reached on Mon. - Fri. (9 am - 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1018.

Andre' L. Jackson
Patent Examiner
AU 3677

ALJ
May 31, 2002


ROBERT J. SANDY
PRIMARY EXAMINER